

ANN BAVENDER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
RICHARD J. ESTEVEZ
PAUL J. FELDMAN
ERIC FISHMAN
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING*
KATHRYN A. KLEIMAN
EUGENE M. LAWSON, JR.
HARRY C. MARTIN
J. TODD METCALF*
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY
HOWARD M. WEISS
* NOT ADMITTED IN VIRGINIA

ORIGINAL DOCKET FILE COPY ORIGINAL
FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW
11th FLOOR, 1300 NORTH 17th STREET
ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

office@fhh-telcomlaw.com

RECEIVED

SEP - 2 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

FRANK D. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D. P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)
RETIRED
EDWARD F. KENEHAN
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
EDWARD A. CAINE*
JOHN JOSEPH SMITH*
WRITER'S DIRECT

703-812-0403

September 2, 1997

VIA HAND DELIVERY

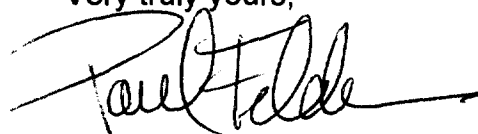
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: CC Docket No. 97-172
Comments of Roseville Telephone Company

Dear Mr. Caton:

On behalf of Roseville Telephone Company, I am enclosing an original and five copies of Roseville's Comments in CC Docket No. 97-172, a proceeding originated by US WEST's Petition for Declaratory Ruling regarding the provision of National Directory Assistance services. If you have any questions regarding this matter, please contact me.

Very truly yours,



Paul J. Feldman
Counsel for
Roseville Telephone Company

PJF/jr
Enclosures

No. of Copies rec'd
List ABCDE

015

ORIGINAL DOCKET FILE COPY ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

SEP - 2 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition of US WEST Communications)

for a Declaratory Ruling Regarding)

the Provision of National Directory Assistance)

CC Docket No. 97-172

COMMENTS OF ROSEVILLE TELEPHONE COMPANY

TABLE OF CONTENTS

| | | |
|------|--|----|
| I. | The Provision of NDA Services Through Use of the 411 Code is Consistent With the Communications Act and the Commission's "N11" Policies, and is Properly Classified as an Adjunct-to-Basic Service..... | 2 |
| A. | Nothing in the Communications Act Prohibits LECs, Especially <u>Independent</u> LECs, from Providing NDA..... | 3 |
| B. | The Provision of NDA Services Through Use of the 411 Code Is Consistent With the Commission's "N11" Policies..... | 5 |
| C. | NDA is an Adjunct-to-Basic, Not an Enhanced, Service..... | 6 |
| II. | LEC Provision of NDA Will Promote Competition in That Market..... | 7 |
| III. | The Commission Should Resolve the General Permissibility and Regulatory Status of NDA Services <u>Separately</u> from the Question as to Whether Provision of NDA is an InterLATA Service Triggering Section 271 Obligations for Bell Operating Companies..... | 8 |
| IV. | Conclusion..... | 10 |

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Petition of US WEST Communications |) | CC Docket No. 97-172 |
| for a Declaratory Ruling Regarding |) | |
| the Provision of National Directory Assistance |) | |

COMMENTS OF ROSEVILLE TELEPHONE COMPANY

Roseville Telephone Company ("RTC"), by its attorneys, hereby files its Comments, pursuant to the Commission's *Public Notice* (DA 97-1634, released August 1, 1997), on the Petition for Declaratory Ruling filed by US WEST Communications, Inc. ("US WEST") seeking a ruling that the provision of National Directory Assistance ("NDA") service through use of the 411 dialing code is permissible under the Communications Act ("*Petition*").

In these Comments, RTC urges the Commission to confirm that the provision of NDA through use of the 411 code is not only permissible and consistent with the Commission's "N11" policies, it is an adjunct-to-basic, not an enhanced, service. RTC also asserts that LEC provision of NDA is necessary to promote competition in the NDA market. Lastly, because non-Bell Operating Company local exchange carriers (such as RTC) seek to provide NDA, RTC strongly urges the Commission to resolve the issue of the general permissibility and regulatory status of NDA services as provided by all

LECs, separately from the question as to whether provision of NDA by a BOC triggers Section 271 issues.

I. The Provision of NDA Services Through Use of the 411 Code is Consistent With the Communications Act and the Commission's "N11" Policies, and is Properly Classified as an Adjunct-to-Basic Service.

US WEST's *Petition* was filed in response to arguments made in Complaints filed by MCI against Ameritech, regarding the provision of NDA service through use of the 411 code.¹ In light of this procedural history, and the fact that the Commission's *Public Notice* itself recognizes the overlap of issues in the *MCI-Ameritech Complaint* proceeding and the proceeding instituted as a result of US WEST's *Petition*, in these Comments, RTC will address arguments raised in both proceedings.

The US WEST *Petition*, together with the *Ameritech Answer*, clearly demonstrate that:

- nothing in the Communications Act prohibits a LEC (including independent LECs as well as BOCs) from providing NDA service through use of the 411 code;
- the provision of NDA through use of the 411 code is consistent with the Commission's "N11" policies; and
- the provision of NDA is an adjunct-to-basic, not an enhanced, service.

RTC fully supports the arguments made in the *Petition*, as well as those in the *Ameritech Answer*, and while it will not repeat those arguments, it will make its own arguments, as well as take this opportunity to demonstrate how the arguments made by Ameritech and US WEST fully address the issues raised by MCI.

¹ Notice of Formal Complaint, File No. E-97-19, filed April 10, 1997 ("*MCI-Ameritech Complaint*"). Ameritech filed its Answer to the Complaint on May 30, 1997 ("*Ameritech Answer*").

A. *Nothing in the Communications Act Prohibits LECs, Especially Independent LECs, From Providing NDA.*

The *MCI-Ameritech Complaint* and the July 21, 1997, Complaint filed by MCI against US WEST ("*MCI-US WEST Complaint*"), suggest that the provision of NDA service by a LEC violates Section 271 and Section 201 of the Communications Act.² These arguments are invalid as a general matter, and are especially baseless when applied to independent LECs.³

In regards to the Section 271 issues, RTC notes the arguments demonstrating that the provision of NDA is not an interLATA service, and thus does not trigger the requirements of Section 271. See *Petition* at pages 5-9, *Ameritech Answer* at pages 15-17, 18. In any case, however, the requirements of Section 271 do not apply to independent LECs, and that Section at very least provides no barrier to the provision of NDA by independent LECs.

MCI's only other statutory argument regarding provision of NDA asserts that because Ameritech and US WEST allegedly have market dominance in local,

² MCI also asserts, in Count IV of the *MCI-Ameritech Complaint* that Ameritech's provision of its 1-800-AMERITECH calling card service itself violates Section 201 of the Act. That service is not at issue in the proceeding instituted by the Commission's *Public Notice* and is thus not addressed herein.

³ In Count V of the *MCI-US WEST Complaint*, MCI asserts that US West's alleged denial to MCI of access to the US WEST NDA database constitutes a violation of Sections 251 and 252 (as well as 201) of the Communications Act. While RTC believes that the Section 251(b)(3) obligation applies only to the provision of databases for local numbers, in any case, the provision of access to an NDA database is an issue that can and should be addressed separately from the issue as to whether the provision of NDA service itself is permissible.

intraLATA toll, and Local DA services in their respective territories, their attempt to “leverage” that dominance with the NDA “misuse” of 411 to secure a competitive advantage in the interLATA market constitutes an “unreasonable practice” under Section 201 of the Communications Act. See *MCI-Ameritech Complaint* at Count IV, and *MCI-US WEST Complaint* at Count II. Therein, MCI cites FCC orders striking down an AT&T tariff making discounts on 800 services available only to customers who also took AT&T’s software defined network services. MCI notes that Commission called AT&T’s offerings a “classic product tie-in”, leveraging control of a non-competitive product (800 services then without number portability) to force customers to use a competitive product (SDN).

The flaw in MCI’s analogy to the cases it cited, however, is that there is no forced “tie-in” with the offering of NDA services, at least as offered by Ameritech (as well as by US WEST, and as proposed by RTC): a customer’s decision not to use the LEC’s National DA service has no impact on the price or terms of using Local DA service, or any other service. Customers are not forced to use National DA in order to receive less expensive Local DA service. Furthermore, the customer has other alternatives for obtaining NDA service: dialing the distant area code plus 555-1212 and obtaining the information from the customer’s interexchange carrier, or use of free DA search tools on the Internet, etc. Thus, there are no financial incentives or technical limitations that in any way “tie” the receipt of Local DA service (or any service) to the receipt of National DA service.

In sum, neither Section 271 nor Section 201 of the Communications Act prohibit LECs, especially independent LECs, from using the 411 code to offer NDA services.

B. The Provision of NDA Services Through Use of the 411 Code Is Consistent With the Commission's "N11" Policies.

In Count VI of the *Ameritech* and Count IV of the *US WEST Complaints*, MCI argued that the provision of NDA is a violation of the FCC's N11 Report and Order.⁴ MCI argues that paragraph 47 of the N11 Report and Order requires that 411 be used only for Local DA. This is a clear misstatement of the Report and Order. It is true that in paragraph 47, the Commission stated that continued use of 411 for Local DA was in the public interest, and that accordingly it was not changing the assignment of the 411 code, and that "the assignment of 411 for such local services should continue...." However, the Commission's continued assignment of 411 for Local DA services did not mean that the Commission intended to limit the use of the 411 code to only Local DA services. In paragraph 48, the Commission addressed the issue as to whether "LEC use of 411 should be restricted to the provision of traditional [local] directory assistance services." Therein, the Commission clearly rejected the suggestion that LEC use of 411 be so limited. See also, *Ameritech Answer* at page 18 and *US WEST Petition* at 14-15.

⁴ In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking, 6 Comm. Reg. (P&F) 695 (1997).

C. *NDA is an Adjunct-to-Basic, Not an Enhanced, Service.*

The Commission also addressed, in paragraph 48 of the N11 Report and Order, LEC provision of enhanced services through use of the 411 code. The Commission explicitly approved the use of the 411 code for such services, subject to the condition that “a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers.” But this approval of the additional use of the 411 code for enhanced services does not mean that the use of the code for National DA, as opposed to Local DA, shifts the classification of DA service from adjunct-to-basic, to an enhanced service.

As demonstrated by US WEST, the Commission has always treated DA as an adjunct-to-basic service. *Petition* at page 11, citing In the Matter of North American Telecommunications Association, Memorandum Opinion and Order, 101 FCC 2d 349, 359 (1985). The Commission’s rationale was that the provision of DA service facilitated the provision of basic telephone service, without altering the fundamental nature of that basic telephone service. *Id.* at page 360. As shown at page 12 of the *Petition*, the adjunct-to-basic classification had nothing to do with the geographic scope of the numbers provided by the service.⁵ Furthermore, just as the provision of a local

⁵ Ameritech has demonstrated that classifying a particular service based on its “local” nature would lead to absurd results. For example, call forwarding would have to be classified on a call-by-call basis, depending upon whether the “forward-to” numbers entered by a particular end-user customer were with that end-user’s local calling area. See Ameritech Petition for Clarification, March 28, 1997, at page 14, attached as Exhibit 6 to the *Ameritech Answer*.

telephone number does not alter the fundamental nature of local telephone service, the provision of a distant number does not alter the fundamental nature of the interexchange telephone call made after obtaining the distant number. Accordingly, as the provision of distant numbers has the same function and characteristics as the provision of local numbers, National DA service shares the same adjunct-to-basic regulatory classification.

RTC recognizes that in footnote 170 of the N11 Report and Order, the Commission stated that “traditional” DA services are adjunct-to-basic, and also described “traditional” DA services as the provision of local numbers. However, while discussing only that type of DA service in that footnote, it does not appear that the Commission intended to limit the adjunct-to-basic classification to “traditional” or local DA. The Commission could have, in footnote 170 or elsewhere in the N11 Report and Order, explicitly classified “non-traditional” or National DA services as enhanced, but it did not do so.

In sum, the provision of NDA services through use of the 411 code is consistent with the Communications Act and the Commission’s “N11” policies, and is properly classified as an adjunct-to-basic service.

II. LEC Provision of NDA Will Promote Competition in That Market.

As demonstrated above, LEC provision of NDA is consistent with both the Communications Act and the Commission’s N11 policy. Nevertheless, RTC takes this opportunity to point out that LEC provision will also promote competition in the NDA market. LECs will be entering the NDA market at an increasing rate in order to just keep up with their competitors.

Currently, there is little competition in the provision of distant DA services. Where a customer's LEC does not provide NDA, the customer can call the distant area code plus 555-1212 (getting DA service from the caller's interexchange carrier). In addition, callers with access to the Internet have the additional option of searching an on-line data base.⁶ Clearly, such a state of affairs is not consistent with broad Commission policies in favor of promoting competition in the provision of telecommunications services. However, LEC provision of NDA services will increase competition in this market by providing another option to callers. Such competition should result in lower prices for such callers.

While LEC provision of NDA increases competition in that market, RTC recognizes that competitive entry into the NDA market will continue to grow. The most likely new entrant into NDA services will be CLECs, especially those associated with major IXC's such as AT&T and MCI. In such cases, ILECs will have to offer NDA service just to remain competitive with the new entrants. RTC thus urges the Commission to consider the pro-competitive impact of LEC provision of NDA service.

III. The Commission Should Resolve the General Permissibility and Regulatory Status of NDA Services Separately from the Question as to Whether Provision of NDA is an InterLATA Service Triggering Section 271 Obligations for Bell Operating Companies.

The *Petition* states that a ruling is sought confirming that "the Communications Act does not prohibit a BOC from providing National Directory Assistance as US WEST provides it." *Petition* at page 3 (emphasis added). While it is natural that US WEST, as

⁶ Some CLECs and cellular carriers currently provide NDA through use of the 411 code.

a BOC, would phrase the ruling sought as one on the provision of NDA by a BOC (rather than more generically, by a LEC), RTC urges the Commission to respond to the issues in this proceeding in a manner that addresses provision of NDA by independent LECs, as well as by BOCs. Such an approach, which would be more efficient and would promote rapid introduction of new services to subscribers, will require the Commission to address the issues of the general permissibility and regulatory status of NDA separately from the issue as to whether BOC provision of NDA triggers Section 271 issues.

RTC is an independent LEC that is currently offering NDA services. Like all LECs, the nature of RTC's provision of NDA could be effected by the Commission's actions in this proceeding. Yet, while many of the issues in this proceeding are equally applicable to BOCs and independent LECs, one issue certainly is not applicable to independent LECs: whether NDA is an interLATA service, the provision of which is thus prohibited by a BOC until that BOC complies with the requirements of Section 271, and the Commission requirements thereunder. RTC is concerned that if the Commission addresses the issues in this proceeding in a manner that mixes a Section 271 analysis with the analysis of the other issues, the result could be an unnecessary cloud of uncertainty over the permissibility and regulatory status of NDA as provided by independent LECs. Such a result could unnecessarily slow down provision of NDA by LECs to subscribers, thus slowing competition in the market for NDA services. In addition, such uncertainty could invite another petition for rulemaking from, or complaint proceeding involving, an independent LEC, thus unnecessarily consuming the resources of the Commission and the effected companies. On the other hand, if the

Commission were to address the issues in a manner that clearly applied to independent LECs, competition in the NDA market would be enhanced, and the resources of all parties conserved.

Accordingly, RTC urges the Commission to address each of the following issues separately:

- all Communications Act issues other than those involving Section 271;
- the impact of Section 271 on BOC provision of NDA;
- the permissibility, under the Commission's "N11" policies, of using the 411 code for provision of NDA;
- the regulatory status of NDA as an adjunct-to-basic, rather than an enhanced, service.

IV. Conclusion.

LEC use of the 411 code to provide NDA is consistent with the Communications Act (at very least as applied to independent LECs) and the Commission's N11 policies. Furthermore, the Commission has always treated DA service as adjunct-to-basic, and there is no basis for treating NDA any differently. While a few parties (including IXC's, and some CLECs and cellular carriers) currently provide NDA service through use of the 411 code, LEC provision of NDA services will promote competition in that market. However, in order to ensure the creation of that competition, and to ensure that the Commission's ruling does not cause unintended and unnecessary regulatory uncertainty, RTC urges the Commission to address the issues of the general

permissibility and regulatory status of NDA separately from the issue as to whether BOC provision of NDA triggers Section 271 issues.

Respectfully submitted,

ROSEVILLE TELEPHONE COMPANY

By: 

George Petrutsas
Paul J. Feldman

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
11th Floor, 1300 North 17th Street
Rosslyn, Virginia 22209
(703) 812-0400

September 2, 1997